

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/812,039	Applicant(s) KANOJIA ET AL.
Examiner BLAKE RUBIN	Art Unit 2457

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/ARIO ETIENNE/
Supervisory Patent Examiner, Art Unit 2457

/Rubin Blake/
Examiner, Art Unit 2457

Continuation of 13. Other:

1. Applicant's arguments filed June 25, 2009 have been fully considered but they are not persuasive.
2. With respect to claims 1,11, and 14 the applicant argues that the combination of Shteyn and Hylton fails to disclose, the remote server downloading the content to the network device in response to the request, via the second network path, and in parallel, instructing the network device, via the first network path, how to install the content downloaded with an event map that specifies events which trigger activation of the content downloaded.
3. The examiner respectfully disagrees. As put forth in the previous office action on October 30, 2008, and communicated the applicant's representative on January 14, 2009, the prior art of record expressly teaches the claimed limitations as currently amended by the applicant. Shteyn discloses a network device, in the form of a set top box, which receives a download of content, in the form of uploaded bytecode (column 45, lines 35-38, whereby the set top box is now described as an FAV, and the bytecode is representative of content which resulted of a request initiated by a configuration change to the network device in the form of the DCM). The above transaction is accomplished via the X.25 data network of Hylton (column 7, 36-39), which discloses the second network path. The X.25 data network of Hylton is disclosed as a means for downloading executable program code (column 8, lines 25-28), in precisely the same manner as Shteyn, and as such the applicant's claims.
4. Along with the above disclosures of downloading content via a second network path, Hylton further discloses an alternate network, described by the applicant as the first network path, as an out-of-band downstream signaling channel (column 22, lines 50-54), which explicitly includes the event map of the instant invention, whereby Hylton describes such features as a service map. The service map of Hylton is described as providing logically connected profile of the content that each subscriber has access to in their respective DETs (column 22, lines 45-50). While Hylton also discloses such instructions for installing downloaded content, also which is sent via the out-of-band network path, by way of controlling software and/or selection of certain channels or frames for decoding in interactive services (column 22, lines 49-57), whereby the interactive services include the execution of software on the set top box.